

(2) Proposed substantive changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization shall be published in the FEDERAL REGISTER.

(d) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the U.S. Air Force's monitoring from the previous year;

(2) Results from marine mammal and sound research; or

(3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

#### **§217.89 Modifications of Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to §216.106 of this chapter and §217.87 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §217.88, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.80(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §217.87 of this chapter may be substantively

modified without prior notification and an opportunity for public comment. Notification shall be published in the FEDERAL REGISTER within 30 days subsequent to the action.

### **Subparts J–Q [Reserved]**

#### **Subpart R—Taking of Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility Off Massachusetts**

SOURCE: 76 FR 34172, June 13, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 34172, June 13, 2011, subpart R was added, effective July 11, 2011 through July 10, 2016.

#### **§217.170 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to Neptune LNG LLC (Neptune) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to commissioning and operation, including maintenance and repair activities, at the Neptune Deepwater Port (Port).

(b) The taking of marine mammals by Neptune may be authorized in a Letter of Authorization only if it occurs at the Neptune Deepwater Port within Outer Continental Shelf blocks NK 19-04 6525 and NK 19-04 6575, which are located at approximately 42°28'09" N. lat and 70°36'22" W. long.

#### **§217.171 Effective dates.**

Regulations in this subpart are effective from July 11, 2011, through July 10, 2016.

[76 FR 35996, June 21, 2011]

#### **§217.172 Permissible methods of taking.**

(a) Under Letters of Authorization issued pursuant to §§216.106 and 217.177 of this chapter, the Holder of the Letter of Authorization (hereinafter "Neptune") may incidentally, but not intentionally, take marine mammals